

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE

SOUTHERN DISTRICT OF GEORGIA  
Statesboro Division

IN RE:	)	Chapter 7 Case
	)	Number <u>97-60806</u>
JAMES A. WATERS	)	
_____	)	
Debtor	)	
_____	)	
FIRST CITIZENS BANK,	)	FILED
	)	at 12 O'clock & 30 min. P.M.
_____Plaintiff,	)	Date: 1-29-99
	)	
vs.	)	Adversary Proceeding
	)	Number <u>97-06036A</u>
JAMES A. WATERS, JIM McCLOON,	)	
RANDY BROWN, and THE TATTNALL	)	
BANK	)	
Defendant(s).	)	
_____	)	

**ORDER**

The Plaintiff, First Citizens Bank ("First Citizens"), filed this adversary proceeding seeking, among other matters, recovery from The Tattnall Bank ("Tattnall"), of any sums received from the debtor, James A. Waters, in association with the settlement of Mr. Waters' workers' compensation claim. By motion, Tattnall requests that this court grant a judgment on the pleadings or, in

the alternative, summary judgment pursuant to Federal Rules of Bankruptcy Procedure 7012(b), and 7056, (hereinafter "F.R.B.P."), and Federal Rule of Civil Procedure 12(c), (hereinafter "F.R.C.P."). Tattnall's motion, treated as one seeking summary judgment, is granted.

With one exception, the facts of this case are undisputed. Mr. Waters had an ongoing financial relationship with Tattnall for a number of years, dating back to at least 1993. On approximately November 18, 1993 Mr. Waters executed and delivered to Tattnall a promissory note in the original principal amount of eighteen thousand seven hundred six and 89/100 (\$18,706.89) dollars. On approximately January 11, 1995, Mr. Waters executed and delivered to Tattnall a promissory note in the original principal amount of thirty thousand ten and 00/100 (\$30,010.00) dollars. On approximately March 10, 1995, Mr. Waters executed and delivered a third promissory note to Tattnall in the original principal amount of twenty thousand twenty-two and 00/100 (\$20,022.00) dollars. On approximately November 3, 1995, Mr. Waters executed and delivered to Tattnall a blanket security agreement covering all indebtedness which existed at the time, as well as any future indebtedness. This security agreement expressly granted Tattnall an interest in the proceeds of a workers' compensation claim that Mr. Waters had

pending at the time. On February 23, 1996, Mr. Waters pledged the proceeds of this same workers' compensation claim to First Citizens, subject to the prior assignment to Tattnall. The assignment to First Citizens was to be effective only to the extent that the proceeds from the workers' compensation claim exceeded the amount due Tattnall.

On approximately July 15, 1996, Tattnall transferred to Mr. Waters' father, Romie Waters, the previous promissory notes which Mr. Waters had executed to Tattnall, as well as Tattnall's interest in the proceeds from Mr. Waters' workers' compensation claim. In consideration of this transfer, Romie Waters executed and delivered to Tattnall a promissory note in the original principal amount of thirty-eight thousand two hundred seventy-seven and 71/100 (\$38,277.71) dollars, representing the pay-off amount of the original promissory notes delivered to Tattnall. Around March of 1997 Mr. Waters settled his workers' compensation claim for forty-five thousand and 00/100 (\$45,000.00) dollars. Although it is unclear who actually directed the payment to Tattnall, Tattnall ultimately received thirty thousand nine hundred seventeen and 78/100 (\$30,917.78) dollars from the workers' compensation settlement. This amount represented the amount due and payable to Tattnall from Romie Waters. First Citizens brought this adversary

proceeding seeking recovery of all funds received by Tattnall by way of Mr. Waters' workers' compensation settlement.

Tattnall now moves for judgment on the pleadings pursuant to F.R.C.P. 12(c)<sup>1</sup>, made applicable to this adversary proceeding by F.R.B.P. 7012(b). "To obtain a judgment on the pleadings, the moving party must clearly establish that no material issue of fact remains unresolved and that it is entitled to judgment as a matter of law." Thunderwave, Inc. v. Carnival Corp., 954 F.Supp. 1562, 1564 (S.D.Fla. 1997) (citing Bryan Ashley Int'l, Inc. v. Shelby Williams Indus., Inc., 932 F.Supp. 290, 291 (S.D.Fla. 1996); Vagenas v. Continental Gin Co., 789 F.Supp. 1137, 1138 (M.D.Ala. 1992), vacated on other grounds, 988 F.2d 104 (11<sup>th</sup> Cir. 1993), cert. denied, 510 U.S. 947, 114 S.Ct. 389 (1993)). Furthermore, under such a motion "the trial court is required to view the facts presented in the pleadings and the inferences to be drawn there from in the light most favorable to the nonmoving party." 5A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 1368

---

<sup>1</sup>F.R.C.P. 12(c)

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

(1990).

However, a motion for judgment on the pleadings is viewed as a motion for summary judgment and analyzed pursuant to F.R.C.P. 56 if materials outside of the pleadings are considered. Here, the deposition of Mr. James A. Waters has been presented and therefore I must treat this motion as one for summary judgment. Similar to the standard of review for a motion for judgment on the pleadings, in reviewing a motion for summary judgment this court must "review the evidence and all factual inferences therefrom in a light most favorable to the party opposing the motion." Latecoere Int'l, Inc. v. U.S. Dept. of Navy, 19 F.3d 1342, 1357 (11<sup>th</sup> Cir. 1994) (quoting Thrasher v. State Farm Fire & Casualty Co., 734 F.2d 637, 638 (11<sup>th</sup> Cir. 1984)). Furthermore, summary judgment shall be granted "'only if no genuine issues of material fact exist' and the moving party is entitled to judgment as a matter of law." Latecoere, at 1357 (quoting Miranda v. B & B Cash Grocery Store, Inc., 975 F.2d 1518, 1532 (11<sup>th</sup> Cir. 1992)).

Under this standard of analysis, it is appropriate to award summary judgment to Tattnall as far as First Citizens' claim that it is entitled to a sum from the workers' compensation settlement by virtue of the security interest granted to First Citizens by Mr. Waters. An assignment of a workers' compensation

claim is not enforceable. "No claim for [workers'] compensation under this chapter shall be assignable, and all compensation and claims therefor shall be exempt from all claims of creditors." O.C.G.A. § 34-9-84. In its reply brief to Tattnall's motion, First Citizens acknowledges this Georgia Code section and does not dispute that it could not have taken a security interest in the workers' compensation claim and that First Citizens has no claim to the funds on this basis. Therefore, as a matter of law, Tattnall is entitled to summary judgment in reference to this particular argument.

First Citizens now, for the first time, raises a concern of a possible preference as to the transfer of funds from Mr. Waters to Tattnall. First Citizens contends that the payment by Mr. Waters to Tattnall served as a payoff of his father's debt to Tattnall and therefore constitutes a preference pursuant to 11 U.S.C. § 547(b)<sup>2</sup>.

---

<sup>2</sup> 11 U.S.C. § 547(b)

(b) Except as provided in subsection (c) of this section, the trustee may avoid any transfer of an interest of the debtor in property

- (1) to or for the benefit of a creditor;
- (2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
- (3) made while the debtor was insolvent;
- (4) made

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

- (5) that enables such creditor to receive more than such creditor

Assuming that the actual creditor referenced in § 547(b) is Tattnall, there is no evidence or allegation that Tattnall is an insider as defined in 11 U.S.C. § 101(31)(A). Section 547(b) requires, among other requirements, that the transfer in question be "made on or within 90 days before the date of the filing of the petition." The petition in Mr. Waters' underlying case was filed August 26, 1997. The transfer, the payment, took place in March, 1997, beyond 90 days of the filing of the petition. Therefore, as to the now claimed preference urged by First Citizens, pursuant to § 547(b), the transfer in question was not preferential. If Romie Waters, the debtor's father, is the creditor, as the holder of the original notes executed by the debtor to the Tattnall Bank, then Romie Waters is clearly an insider as defined under 11 U.S.C. §101(31)(A)(i), a relative of the debtor. Thus the 90-day bar to pursuing the preferential transfer is overcome. As the undisputed facts establish that the transfer occurred within one year of the bankruptcy filing, there does not appear to be a time bar from

---

would receive if

- (A) the case were a case under chapter 7 of this title;
- (B) the transfer had not been made; and
- (C) such creditor received payment of such debt to the extent provided by the provisions of this title.

bringing the action. However, 11 U.S.C. § 550(c)<sup>3</sup> prevents a recovery from Tattnall. From the stipulated facts, Mr. Romie Waters was the creditor of the debtor and the debtor's father, an insider as defined under the Bankruptcy Code. The transfer made by the debtor to Tattnall was for the benefit of Mr. Romie Waters; the money paid the note due Tattnall from Romie Waters. The transfer occurred between 90 days and one year prior to the filing of the bankruptcy petition. Tattnall is not an insider. Therefore, Section 550(c) prevents a recovery against Tattnall.

Having decided that the grounds asserted by First Citizens against Tattnall are not legally valid, Tattnall's motion for summary judgment is established.

It is, therefore, ORDERED that The Tattnall Bank's Motion for Judgment on the Pleadings, or in the alternative, Motion for Summary Judgment, is granted.

---

<sup>3</sup>11 U.S.C. § 550(c) provides:

If a transfer made between 90 days and one year before the filing of the petition -

(1) is avoided under § 547(b) of this title; and

(2) was made for the benefit of the creditor that at the time of such transfer was an insider;

the trustee may not recover under subsection (a) from a transferee that is not an insider.



It is further ORDERED that this judgment does not effect the claims asserted in this adversary proceeding by First Citizens Bank against Defendants James A. Waters, Jim McCloon, or Randy Brown.

JOHN S. DALIS  
CHIEF UNITED STATES BANKRUPTCY JUDGE

Dated at Augusta, Georgia  
this 29th Day of January, 1999.